

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 96-7260

RICHARD ATWELL,

Petitioner - Appellant,

versus

WILLIAM C. DUNCIL, Warden, Huttonsville Cor-
rectional Center; CARL LEGURSKY, Former
Warden, W.V.P.; GEORGE TRENT, Warden, W.V.P./
Mt. Olive Correctional Complex; NICHOLAS J.
HUN, Commissioner of the Department of
Corrections,

Respondents - Appellees.

Appeal from the United States District Court for the Southern Dis-
trict of West Virginia, at Charleston. Charles H. Haden II, Chief
District Judge. (CA-96-561-2)

Submitted: October 17, 1996

Decided: November 1, 1996

Before MURNAGHAN and WILLIAMS, Circuit Judges, and BUTZNER, Senior
Circuit Judge.

Dismissed by unpublished per curiam opinion.

Richard Atwell, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

Appellant seeks to appeal the district court's order dismissing his petition filed under 28 U.S.C. § 2254 (1994), amended by Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214. Appellant's case was referred to a magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) (1994). The magistrate judge recommended that relief be denied and advised Appellant that failure to file timely objections to this recommendation could waive appellate review of a district court order based upon the recommendation. Despite this warning, Appellant failed to object to the magistrate judge's recommendation.

The timely filing of objections to a magistrate judge's recommendation is necessary to preserve appellate review of the substance of that recommendation when the parties have been warned that failure to object will waive appellate review. Wright v. Collins, 766 F.2d 841, 845-46 (4th Cir. 1985). See generally Thomas v. Arn, 474 U.S. 140 (1985). Appellant has waived appellate review by failing to file objections after receiving proper notice. We accordingly deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED